

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 636

Introduced by Senator Corbett

(Coauthors: Assembly Members Jeffries and, Portantino, and Smyth)

February 18, 2011

An act to amend Sections 6206.7, 6208, ~~6215.4~~, and 6215.7 of, and to add Sections 6206.1, 6208.1, 6208.2, 6215.25, 6215.71, and 6215.72 to add Sections 6208.1 and 6208.2 to, the Government Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Corbett. Personal information: Internet disclosure prohibition.

Existing law authorizes victims of domestic violence or stalking and reproductive health care providers, employees, and volunteers, as defined, to complete an application to be approved by the Secretary of State for the purposes of enabling state and local agencies to respond to requests for public records without disclosing a program participant's residence address contained in any public record. ~~Existing law requires any records or documents pertaining to a program participant be retained by the secretary and held confidential for a period of 3 years after termination of certification and then destroyed, except for change of name records, which shall be retained permanently. Existing law prohibits the Secretary of State from making a program participant's address publicly available, except in specified circumstances, including when the participant's program certification has been canceled.~~

~~This bill would specify that the records or documents retained by the secretary are confidential and shall not be disclosed pursuant to the California Public Records Act, and would make conforming changes.~~

This bill would specify, instead, that a participant's personal address may be revealed after termination of certification only if the participant's termination resulted from the program manager determining that false information was used as a subterfuge to avoid detection of illegal or criminal activity or apprehension by law enforcement.

~~This bill would also require the secretary to develop, and provide to a program participant upon certification of the participant's application, for purposes of the program for victims of domestic violence or stalking, authorize a program participant to obtain a written form that the program participant may submit to an entity, as defined, that operates an Internet search engine or any other form of a public Internet-based search database, for purposes of preventing the disclosure of the participant's personal information by the entity on the search engine or database, including, but not limited to, the participant's home address or telephone number. that commercially operates an Internet Web site.~~

~~This bill would, for purposes of the program for victims of domestic violence or stalking, require an entity that commercially operates an Internet search engine or any other form of a public Internet-based search database, the Internet Web site and that receives the program participant opt-out form to review any Internet Web site that is owned, operated, or maintained by the entity to locate and remove, within 2 business days, any personal information of the identified participant from the publicly accessible areas of the Internet Web site, as specified remove the participant's personal information from public display on the Internet Web site within 2 days, as specified. The bill would also prohibit an entity from soliciting, selling, or trading on the Internet specified information of a program participant or a family member of a program participant, as specified. Violation of these provisions would be subject to specified civil penalties.~~

~~The bill would, for purposes of the program for victims of domestic violence or stalking, prohibit a person from maliciously, and with the intent to obstruct justice or the due administration of the laws, or with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence, posting on an the Internet Web site the home address, the telephone number, or personal identifying information of a program participant or the program participant's family members who are participating in the program. Violations of these provisions would be a crime, punishable as specified.~~

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6206.1 is added to the Government Code,~~
2 ~~to read:~~

3 ~~6206.1. Except as provided in Section 6208, all records or~~
4 ~~documents pertaining to a program participant are confidential and~~
5 ~~shall not be subject to disclosure pursuant to the California Public~~
6 ~~Records Act (Chapter 3.5 (commencing with Section 6250)).~~

7 ~~SEC. 2.~~

8 ~~SECTION 1.~~ Section 6206.7 of the Government Code is
9 amended to read:

10 6206.7. (a) A program participant may withdraw from program
11 participation by submitting to the address confidentiality program
12 manager written notification of withdrawal and his or her current
13 identification card. Certification shall be terminated on the date
14 of receipt of this notification.

15 (b) The address confidentiality program manager may terminate
16 a program participant's certification and invalidate his or her
17 authorization card for any of the following reasons:

18 (1) The program participant's certification term has expired and
19 certification renewal has not been completed.

20 (2) The address confidentiality program manager has determined
21 that false information was used in the application process or that
22 participation in the program is being used as a subterfuge to avoid
23 detection of illegal or criminal activity or apprehension by law
24 enforcement.

25 (3) The program participant no longer resides at the residential
26 address listed on the application, and has not provided at least
27 seven days' prior notice in writing of a change in address.

(4) A service of process document or mail forwarded to the program participant by the address confidentiality program manager is returned as nondeliverable.

(5) The program participant obtains a legal name change and fails to notify the Secretary of State within seven days.

(c) If termination is a result of paragraph (1), (3), (4), or (5) of subdivision (b), the address confidentiality program manager shall send written notification of the intended termination to the program participant. The program participant shall have five business days in which to appeal the termination under procedures developed by the Secretary of State.

(d) The address confidentiality program manager shall notify in writing the county elections official and authorized personnel of the appropriate county clerk's office, county recording office, and department of health of the program participant's certification withdrawal, invalidation, expiration, or termination.

(e) Upon receipt of this termination notification, authorized personnel shall transmit to the address confidentiality program manager all appropriate administrative records pertaining to the program participant and the record transmitting agency is no longer responsible for maintaining the confidentiality of a terminated program participant's record.

(f) *Following termination of program participant certification as a result of paragraph (2) of subdivision (b), the address confidentiality program manager may disclose information contained in the participant's application.*

~~SEC. 3.~~

SEC. 2. Section 6208 of the Government Code is amended to read:

6208. The Secretary of State may not make a program participant's address, other than the address designated by the Secretary of State, or a program participant's name change available for inspection or copying, except under any of the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency.

(b) If directed by a court order, to a person identified in the order.

(c) *If certification has been terminated as a result of paragraph (2) of subdivision (b) of Section 6206.7.*

SEC. 4. Section 6208.1 is added to the Government Code, to read:

~~6208.1. (a) The Secretary of State shall develop, and provide to a program participant upon certification of the participant's application, a written form that the program participant may submit to an entity that operates an Internet search engine or any other form of a public Internet-based search database, for purposes of preventing the disclosure of the participant's personal information by the entity on the search engine or database, including, but not limited to, the participant's home address or telephone number. In addition to specifying that the program participant has decided against having his or her personal information disclosed on an Internet search engine or database, the form shall include a narrative description of the requirements imposed by this section.~~

~~(b) (1) An entity described in subdivision (a), that operates an Internet search engine or any other form of a public Internet-based search database, and that receives the program participant opt-out form described in subdivision (a), shall review any Internet Web site that is owned, operated, or maintained by that entity to locate and remove, within two business days, any personal information of the identified participant from the publicly accessible areas of the Internet Web site. The entity shall have an ongoing responsibility to review any Internet Web site that is owned, operated, or maintained by that entity for the purpose of ensuring that the participant's personal information is not reported to those Internet Web sites.~~

~~(2) An entity described in subdivision (a), that operates an Internet search engine or any other form of public Internet-based search database, and that receives the program participant opt-out~~

6208.1. (a) Upon certification of the participant's application, the participant shall obtain a written opt-out form for submission to an entity that commercially operates an Internet Web site. The form shall notify the entity of the protected person and prevent the inclusion of the participant's addresses and telephone numbers on the Internet Web site. The form shall include a narrative description of the requirements imposed by this section.

(b) (1) An entity that receives the opt-out form of a participant pursuant to this section shall remove the participant's personal information from public display on the Internet Web site within two days of delivery of the opt-out form, and shall continue to

1 *ensure that this information is not reposted on the same Internet*
2 *Web site, a subsidiary Internet Web site, or any other Internet Web*
3 *site maintained by the entity.*

4 (2) Any entity described in subdivision (a) that receives the
5 opt-out form described in subdivision (a), shall not solicit, sell, or
6 trade on the Internet the home address or telephone number of the
7 program participant or a family member of a program participant
8 who is also participating in the program.

9 (c) An entity that violates subdivision (b) shall be subject to a
10 civil penalty for each violation in the amount of five thousand
11 dollars (\$5,000). An action for a civil penalty under this subdivision
12 may be brought by any public prosecutor in the name of the people
13 of the state and the penalty imposed shall be enforceable as a civil
14 judgment.

15 (d) A program participant whose home address or telephone
16 number is made public as a result of a violation of subdivision
17 (b) may bring an action seeking injunctive or declaratory relief in
18 any court of competent jurisdiction. If a jury or court finds that a
19 violation has occurred, it may grant injunctive or declaratory relief
20 and shall award the program participant court costs and reasonable
21 attorney's fees.

22 (e) Notwithstanding any other provision of law, a program
23 participant whose home address or telephone number is solicited,
24 sold, or traded in violation of subdivision (b) may bring an action
25 in any court of competent jurisdiction. If a jury or court finds that
26 a violation has occurred, it shall award damages to that program
27 participant in an amount up to a maximum of three times the actual
28 damages, but in no case less than four thousand dollars (\$4,000).

29 (f) Nothing in this section shall preclude prosecution under any
30 other provision of law.

31 (g) For purposes of this section, the term "entity" shall include
32 a business, a state or local agency, a private entity, or an individual
33 person.

34 ~~SEC. 5.~~

35 SEC. 4. Section 6208.2 is added to the Government Code, to
36 read:

37 6208.2. (a) (1) No person shall maliciously, and with the
38 intent to obstruct justice or the due administration of the laws, or
39 with the intent that another person imminently use that information
40 to commit a crime involving violence or a threat of violence, post

1 on an Internet Web site *the Internet* the home address, the telephone
2 number, or personal identifying information of a program
3 participant or the program participant's family members who are
4 participating in the program.

5 (2) A violation of this subdivision is a misdemeanor punishable
6 by a fine of up to two thousand five hundred dollars (\$2,500), or
7 imprisonment of up to six months in a county jail, or by both that
8 fine and imprisonment.

9 (3) A violation of this subdivision that leads to the bodily injury
10 of the program participant, or of any of the program participant's
11 family members who are participating in the program, is a
12 misdemeanor punishable by a fine of up to five thousand dollars
13 (\$5,000), or imprisonment of up to one year in a county jail, or by
14 both that fine and imprisonment.

15 (b) Nothing in this section shall preclude prosecution under any
16 other provision of law.

17 SEC. 6. ~~Section 6215.25 is added to the Government Code, to~~
18 ~~read:~~

19 ~~6215.25. Subject to Section 6215.7, all records or documents~~
20 ~~pertaining to a program participant are confidential and shall not~~
21 ~~be subject to disclosure pursuant to the California Public Records~~
22 ~~Act (Chapter 3.5 (commencing with Section 6250)):~~

23 SEC. 7. ~~Section 6215.4 of the Government Code is amended~~
24 ~~to read:~~

25 ~~6215.4. (a) A program participant may withdraw from program~~
26 ~~participation by submitting to the address confidentiality program~~
27 ~~manager written notification of withdrawal and his or her current~~
28 ~~identification card. Certification shall be terminated on the date~~
29 ~~of receipt of this notification.~~

30 ~~(b) The address confidentiality program manager may terminate~~
31 ~~a program participant's certification and invalidate his or her~~
32 ~~authorization card for any of the following reasons:~~

33 ~~(1) The program participant's certification term has expired and~~
34 ~~certification renewal has not been completed.~~

35 ~~(2) The address confidentiality program manager has determined~~
36 ~~that false information was used in the application process or that~~
37 ~~participation in the program is being used as a subterfuge to avoid~~
38 ~~detection of illegal or criminal activity or apprehension by law~~
39 ~~enforcement.~~

~~(3) The program participant no longer resides at the residential address listed on the application, and has not provided at least seven days' prior notice in writing of a change in address.~~

~~(4) A service of process document or mail forwarded to the program participant by the address confidentiality program manager is returned as nondeliverable.~~

~~(5) The program participant who is a provider, employee, or volunteer fails to disclose a change in employment, or termination as volunteer or provider.~~

~~(e) If termination is a result of paragraph (1), (3), (4), or (5) of subdivision (b), the address confidentiality program manager shall send written notification of the intended termination to the program participant. The program participant shall have five business days in which to appeal the termination under procedures developed by the Secretary of State.~~

~~(d) The address confidentiality program manager shall notify in writing the county elections official and authorized personnel of the appropriate county clerk's office, and county recording office of the program participant's certification withdrawal, invalidation, expiration, or termination.~~

~~(e) Upon receipt of this termination notification, authorized personnel shall transmit to the address confidentiality program manager all appropriate administrative records pertaining to the program participant and the record transmitting agency is no longer responsible for maintaining the confidentiality of a terminated program participant's record.~~

~~SEC. 8.~~

~~SEC. 5. Section 6215.7 of the Government Code is amended to read:~~

~~6215.7. The Secretary of State may not make a program participant's address, other than the address designated by the Secretary of State, available for inspection or copying, except under any of the following circumstances:~~

~~(a) If requested by a law enforcement agency, to the law enforcement agency.~~

~~(b) If directed by a court order, to a person identified in the order.~~

~~(c) If certification has been terminated pursuant to paragraph (2) of subdivision (b) of Section 6215.4.~~

1 ~~SEC. 9.—Section 6215.71 is added to the Government Code, to~~
2 ~~read:~~

3 ~~6215.71. (a) The Secretary of State shall develop, and provide~~
4 ~~to a program participant upon certification of the participant's~~
5 ~~application, a written form that the program participant may submit~~
6 ~~to an entity that operates an Internet search engine or any other~~
7 ~~form of a public Internet-based search database, for purposes of~~
8 ~~preventing the disclosure of the participant's personal information~~
9 ~~by the entity on the search engine or database, including, but not~~
10 ~~limited to, the participant's home address or telephone number. In~~
11 ~~addition to specifying that the program participant has opted against~~
12 ~~having his or her personal information disclosed on an Internet~~
13 ~~search engine or database, the form shall include a narrative~~
14 ~~description of the requirements imposed by this section.~~

15 ~~(b) (1) An entity described in subdivision (a), that operates an~~
16 ~~Internet search engine or any other form of a public Internet-based~~
17 ~~search database, and that receives the program participant opt-out~~
18 ~~form described in subdivision (a), shall review any Internet Web~~
19 ~~site that is owned, operated, or maintained by that entity to locate~~
20 ~~and remove, within two business days, any personal information~~
21 ~~of the identified participant from the publicly accessible areas of~~
22 ~~the Internet Web site. The entity shall have an ongoing~~
23 ~~responsibility to review any Internet Web site that is owned,~~
24 ~~operated, or maintained by that entity for the purpose of ensuring~~
25 ~~that the participant's personal information is not reported to those~~
26 ~~Internet Web sites.~~

27 ~~(2) An entity described in subdivision (a), that operates an~~
28 ~~Internet search engine or any other form of public Internet-based~~
29 ~~search database, and that receives the program participant opt-out~~
30 ~~form described in subdivision (a), shall not solicit, sell, or trade~~
31 ~~on the Internet the home address or telephone number of the~~
32 ~~program participant or a family member of a program participant~~
33 ~~who is also participating in the program.~~

34 ~~(c) An entity that violates subdivision (b) shall be subject to a~~
35 ~~civil penalty for each violation in the amount of five thousand~~
36 ~~dollars (\$5,000). An action for a civil penalty under this subdivision~~
37 ~~may be brought by any public prosecutor in the name of the people~~
38 ~~of the state and the penalty imposed shall be enforceable as a civil~~
39 ~~judgment.~~

1 ~~(d) A program participant whose home address or telephone~~
2 ~~number is made public as a result of a violation of subdivision (b)~~
3 ~~may bring an action seeking injunctive or declaratory relief in any~~
4 ~~court of competent jurisdiction. If a jury or court finds that a~~
5 ~~violation has occurred, it may grant injunctive or declaratory relief~~
6 ~~and shall award the program participant court costs and reasonable~~
7 ~~attorney's fees.~~

8 ~~(e) Notwithstanding any other provision of law, a program~~
9 ~~participant whose home address or telephone number is solicited,~~
10 ~~sold, or traded in violation of subdivision (b) may bring an action~~
11 ~~in any court of competent jurisdiction. If a jury or court finds that~~
12 ~~a violation has occurred, it shall award damages to that program~~
13 ~~participant in an amount up to a maximum of three times the actual~~
14 ~~damages, but in no case less than four thousand dollars (\$4,000).~~

15 ~~(f) Nothing in this section shall preclude prosecution under any~~
16 ~~other provision of law.~~

17 ~~(g) For purposes of this section, the term "entity" shall include~~
18 ~~a business, a state or local agency, a private entity, or an individual~~
19 ~~person.~~

20 ~~SEC. 10.— Section 6215.72 is added to the Government Code,~~
21 ~~to read:~~

22 ~~6215.72. (a) (1) No person shall maliciously, and with the~~
23 ~~intent to obstruct justice or the due administration of the laws, or~~
24 ~~with the intent that another person imminently use that information~~
25 ~~to commit a crime involving violence or a threat of violence, post~~
26 ~~on an Internet Web site the home address, the telephone number,~~
27 ~~or personal identifying information of a program participant or the~~
28 ~~program participant's family members who are participating in~~
29 ~~the program.~~

30 ~~(2) A violation of this subdivision is a misdemeanor punishable~~
31 ~~by a fine of up to two thousand five hundred dollars (\$2,500), or~~
32 ~~imprisonment of up to six months in a county jail, or by both that~~
33 ~~fine and imprisonment.~~

34 ~~(3) A violation of this subdivision that leads to the bodily injury~~
35 ~~of the program participant, or of any of the program participant's~~
36 ~~family members who are participating in the program, is a~~
37 ~~misdemeanor punishable by a fine of up to five thousand dollars~~
38 ~~(\$5,000), or imprisonment of up to one year in a county jail, or by~~
39 ~~both that fine and imprisonment.~~

(b) ~~Nothing in this section shall preclude prosecution under any other provision of law.~~

~~SEC. 11.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CORRECTIONS:

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